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# The role and powers of the Queen in the 2019 Brexit parliamentary crisis - reflections from British and Commonwealth history

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## **The Role and Powers of the Queen in the 2019 Brexit Parliamentary Crises – Reflections from British and Commonwealth History**

**Abstract:** This article assesses the role and powers of the Queen as Head of State during the political crises surrounding Brexit and the prorogation of parliament in 2019. These crises in Westminster highlighted the lack of contemporary awareness of the Queen's constitutional capacities and constraints in such tense political conditions. A consequence of this was widespread confusion and ignorance regarding the use of the prerogative powers by both the Queen as Head of State and the Prime Minister as Head of Government. It seeks to show the importance of understanding the Queen's position as a political actor rather than a purely ceremonial one by drawing on modern British and Commonwealth history.

**Keywords:** Brexit, Monarchy, Heads of State, Parliament, Political Crisis, British History, Commonwealth History, British Constitution, United Kingdom

When Harry Truman told George VI in July 1945, 'You've had a Revolution', after the Labour landslide, the King replied to the US president: 'Oh No! We don't have those over here'.<sup>1</sup> This conveyed the sense that Britain was different. There was indeed a belief in the postwar United Kingdom that constitutional crises happened elsewhere. In this line of thinking, it was almost uniformly accepted that the monarch had no role in the constitution beyond the ceremonial. Politically, the monarch is there to follow the advice of the prime minister and cabinet. Law scholar, Robert Blackburn, argued in 2013 a common judgement among British academics that 'The Queen has set the gold standard for how a royal Head of State should perform his or her role in modern times'.<sup>2</sup> Similarly, Peter Hennessy in the latest volume of his acclaimed history of postwar Britain, includes 'the exemplary constitutional monarchy of Elizabeth II' on the list of Britain's post-war 'pessimism breakers'.<sup>3</sup> By this they mean that the Queen in Britain has largely avoided intervening in politics, not daring to exercise her prerogative powers, other than on the

advice of ministers. Winston Churchill's high adulatory veneration toward the Crown was qualified by his belief that the fundamental principle of the constitution was the 'supremacy of Parliament over the crown', which meant it was the 'duty of the sovereign to act in accordance with advice'. A contrary understanding from the Head of State would be dangerous. As the devoted monarchist Churchill told his friend, the forsaken Duke of Windsor, 'when our kings are in conflict with our constitution, we change our kings', as was the case in 1688 and 1936.<sup>4</sup> The Queen in the conventional British academic and political view has concentrated on the ceremonial aspects of the Head of State position and scrupulously carried out her public duties in harmony with the Government.

### **The 2019 Brexit Parliamentary Crisis**

The political crises of 2019, especially after the change in the prime ministership from Theresa May to Boris Johnson, has shattered some of the assumptions surrounding the Sovereign's constitutional and political role. This context has arisen due to prolonged divisions and turmoil following the June 2016 referendum that resulted in a "Yes" to Brexit, namely the withdrawal of Britain's membership of the European Union. This subject has caused political crises across the institutions of government, as well as in society at large, in a manner not seen in British politics for decades. The inability of Parliament in concert with the government to find a working majority behind a single approach of effecting Brexit, along with the restrictions of the Fixed Term Parliament Act 2011, have disrupted the smoothness and efficiency of the "Queen-in-Parliament" constitution, whereby an Executive by virtue of having a majority in the popularly elected House of Commons could transform its political programme and policies into law. It is beyond the scope or interest of this article to interrogate the rights and wrongs of Brexit. Neither does it aim to address the decision to prorogue parliament between 9 September and 14 October 2019 and subsequently for that decision to be declared "unlawful" by the Supreme Court on 24 September 2019 with the result that parliament resumed.<sup>5</sup> What does concern this article, however, is the way that the political crisis brought attention upon the constitutional and political role of the Head of State in the United Kingdom in a way that has not been seen for over a century since the parliamentary crises of 1909-14. These, it must be remembered, were of a greater magnitude and importance than Brexit.<sup>6</sup> Headlines, rhetoric, protests and political actions occurred in 2019 that revived the dormant idea in Britain that the Head of State was a part of the constitutional and political process. Senior figures on both sides of the Brexit debate made open calls for the Queen to get involved in politics and use her constitutional powers to intervene. There was, for example, serious discussion among Brexit supporting ministers and members of parliament that if a bill was

passed by parliament that was not in line with the government's wishes, then the Queen should be advised to withhold the Royal Assent and thereby prevent it having any force.<sup>7</sup> While those who wanted Britain to remain in the European Union urged the Queen to dismiss the prime minister for various reasons. These included not stepping down in the event of losing a vote of no confidence, receiving the verdict of the Supreme Court that went against the Government's belief it had acted legally in proroguing parliament, misleading the Queen as Head of State with 'unlawful' advice on the prorogation, and potentially breaking the law. On the reasonings of both sides of debate by judges, politicians and journalists it is perhaps worthy to be reminded of H. V. Evatt's comment some eighty years ago that the powers of the British constitution are 'befogged by conflicting authority'.<sup>8</sup>

The prorogation incited headlines and comments that have been seldom seen in contemporary Britain and once again the powers of the Crown and role of the Head of State were central to the tension and debate. The *Sun* pronounced 'Hey Big Suspender' (*The Sun*, 29 August 2019) on the prime minister advising prorogation in August; the *Financial Times* had 'Boris Johnson denies misleading the Queen' (*Financial Times*, 12 September 2019) when the Supreme Court's verdict came through in September; while in the aftermath of both events the *New Statesman* proclaimed in early October: 'Why the Queen could sack Boris Johnson as Prime Minister' (*New Statesman*, 9 October 2019). The former Conservative Attorney-General, Dominic Grieve, insisted that if Boris Johnson did not comply with the law asking him to seek an extension to the Brexit negotiations, then the Queen would dismiss him: 'He'll be out in five minutes' (*The Independent*, 30 September 2019). As if to give credence to such matters a 'well placed source' told respected journalist, Ian Birrell, that 'The Queen had, for the first time in her reign, sought advice on sacking a prime minister before the Supreme Court verdict' (*INews*, 29 September 2019). With a steadfast dedication to heighten the crisis it was also leaked from high sources that Boris Johnson 'will dare the Queen to sack him rather than resign as prime minister in an attempt to drive through Brexit on October 31, cabinet ministers have revealed' (*Sunday Times*, 6 October 2019). The prorogation of parliament, normally a procedural and routine part of the parliamentary calendar, had in this exercise in September 2019 provoked fierce and divisive reactions from across the political (and academic) spectrum.<sup>9</sup>

The idea that the prime minister would prorogue parliament during a time of agitated parliamentary and political debate over Brexit offended the constitutional sensibilities of many. On the day the prorogation request was made and granted, Lord Hennessy dramatically intoned on the BBC – 'At 12 noon on Wednesday August 28 in the library at Balmoral Castle the 'good chap' theory of government fell in fragments at the feet of Her Majesty the Queen' (*Sunday Times*,

8 September 2019). There were some in civil society and politics who believed the monarch would refuse or delay the prorogation request. Naomi Smith, chief executive of ‘Best for Britain’, an organisation whose objective is to prevent Brexit, stated within hours of Johnson’s request to the Queen to suspend parliament.

It would make no sense for the Queen to back this deeply undemocratic, unconstitutional and fundamentally political manoeuvre from the government. If the Queen is asked to help, she would do well to remember history doesn’t look too kindly on royals who aid and abet the suspension of democracy (*The Guardian*, 28 August 2019).

Not long after Smith’s statement, news emerged that the Queen had assented to the request to prorogue almost immediately on receiving it. This prompted the Labour MP, Kate Osamor, a former Shadow International Development Secretary, after news the order had been signed: ‘The. Queen. Did. Not. Save. Us.’ She later added with reference to King Constantine II of Greece’s acceptance of the 1967 military coup against the sitting civilian government: ‘The Queen should look at what happened to her cousin Tino ex King of Greece when you enable a right wing coup! Monarchy abolished!’.<sup>10</sup> In mitigation, there were many commentators including the BBC’s Royal Correspondent stating on the same day of 28 August 2019 that ‘It would have been impossible for the Queen to turn down the prime minister’s request’ (BBC, 28 August 2019). The recently retired Law Lord, Jonathan Sumption, also proclaimed later that evening on the current affairs programme, *Newsnight*, that the Queen had no choice as she has ‘no source of advice independent of the government, she is bound to take the government’s advice’ (*Newsnight*, 28 August 2019). Some British establishment voices disagreed with that view. Lord Armstrong, Cabinet Secretary 1979-87, argued earlier in June 2019 that prorogation over avoiding scrutiny and debate over Brexit could incapacitate Parliament’s ‘rights or duties’ forcing the Queen into intervention.

If the Sovereign received a proposal, or advice, to prorogue Parliament and had reason to believe or suspect that the purpose was to frustrate Parliament from exercising its rights or duties, she might think it necessary to seek other advice as to whether she should accept or query the advice, or even decline to comply with it (*Evening Standard*, 7 June 2019).

Perhaps the nonagenarian Armstrong had such a view, since as a young Civil Servant he wrote a memorandum in March 1974 as Principal Private Secretary to the prime minister on the options

available to the Queen and civil service in the event of a hung parliament where advice to the monarch could be fluid and contested.<sup>11</sup>

The Queen's Speech on 14 October also intensified a feeling that all was not well with the British constitution. Normally this Speech from the Throne is nothing more than a regular occasion where the Queen outlines the government's programme, On this occasion however one parliamentary sketch writer believed the sovereign 'looked both frail and furious' (*The Guardian*, 14 October 2019) and as others commented at a time of volatile passions the traditional phrase of the Sovereign: "My Government" for what is in fact the Government's, and not the Queen's programme seemed especially incongruous.<sup>12</sup> For bringing in the monarch into such treacherous political waters the Leader of the Opposition, Jeremy Corbyn, who has unhidden republican sympathies, argued that the prime minister 'should apologise to her [the Queen] for the advice he gave her...' (*The Independent*, 25 September 2019). The Union itself came into question across the component parts of the United Kingdom and Northern Ireland where the Queen has a special cultural and constitutional compact. Even when advocating independence, the position of the Scottish National Party has generally been one where the 1603 Union of Crowns would enable a state where 'On independence Her Majesty the Queen would remain Head of State in Scotland' and of United Kingdoms in 'monarchical and social Union'.<sup>13</sup> In the aftermath of the 2019 crises this assumption cannot be taken for granted.

Soothed by decades of security and peace the British were from June 2016 awakened to a very different political reality. Perhaps, aside from the seriousness and drama of the political issues facing both Head of State and Head of Government, there is some explanation to be found in those Lord Palmerston termed "Her Majesty's irresponsible advisers" of the courtiers surrounding the Queen's great-great grandmother.<sup>14</sup> These advisers at Buckingham Palace and at Downing Street while having official and quasi-official standing such as the Queen's Private Secretary, the Cabinet Secretary or the Special Adviser to the prime minister, Dominic Cummings, have conspicuous influence on their masters and are intimate with their opinions and choices without being accountable to parliament or holding elected office. Traditionally, these most senior officials surrounding the monarch and prime minister are there to act as not only as shock absorbers, but also to discuss, intimate and sometimes negotiate the management of controversial political and constitutional issues and thereby avert surprise and political crisis.<sup>15</sup> It seems in 2019 that this concert of officials and advisers were unable or unwilling to do this. However, in the end it is those that are formally 'responsible' – the Head of State and Head of Government – for any actions taken in their name. Another critical element to the 2019 episode is as Vernon Bogdanor argued in his 1995 constitutional and historical survey of the monarchy that the advice the

Sovereign has received from her British prime ministers has seldom been ‘improperly’ given<sup>16</sup>. Therefore, the Queen in the United Kingdom has avoided the difficulty till 2019 of facing highly controversial advice regarding the use of the prerogative.<sup>17</sup> At the end of August 1959, Conservative prime minister, Harold Macmillan, thinking of prorogation and dissolution, recorded in his diary that he wanted to go to Balmoral in person to make the request of the Sovereign so that the country could go to the polls: ‘I rather want to keep the Queen’s prerogative in its integrity’.<sup>18</sup> Sixty years later, almost to the day, the integrity of the power to prorogue was undoubtedly in question under his successor in the late summer of 2019.

Forty years earlier in 1979 the former Conservative thinker and lord chancellor, Quentin Hailsham, wrote a foreword to Sir John Kerr’s memoirs, that highlight the political responsibilities of the Crown’s powers. Kerr, had infamously as the Queen’s Representative and governor-general in Australia dramatically sacked the Labor prime minister Gough Whitlam in November 1975. Hailsham believed the Kerr did the right thing and speculated on lessons for the both the Crown and British politicians from the episode.

Though it be the business of British statesmen to avoid a situation which may bring reserve powers into action, the Crown cannot avoid its obligations...[when politicians try to abuse them, especially without the sanction of parliament].

Hailsham continued that if Edward Heath in March 1974 had not resigned when unable to form a government or if James Callaghan in 1978 could not carry the Speech from the Throne, then the Queen ‘would have been forced to dismiss’ her British prime ministers.<sup>19</sup> Kerr’s actions in 1975 jolted many by reminding that the Crown’s raw political power could not be forgotten and nor should the Head of State’s role in crisis be presumed to be one of ceremonial inaction.

The Queen’s private secretary, Sir Martin Charteris, explained to Sir Anthony Malmo, the governor-general of Malta, in the mid 1970s ‘For a Constitutional Monarch, the only possible cause of embarrassment is to be asked to act unconstitutionally’.<sup>20</sup> Arguably any advice that threatens the accepted Rule of Law or that advances of ‘legislative impropriety’ invites the contemplation of using reserve powers to avoid not only embarrassment but major breaches of constitutional convention. While the ominous Norman French formula of the Sovereign’s veto “*La Reyne se avisera*” (The Queen will think about it) has not been used at Westminster since 1707, there are instances where ‘private protest’ from the Head of State has proved more effective, and could yet be still used, to thwart political actions behind the scenes than any formal public refusal.<sup>21</sup> At the least the Sovereign’s power to query actions and policies of Her Government is acknowledged.

The House of Commons Public Administration Committee reported in 2004 that certain discretionary powers should ‘remain in the Sovereign’s hands’ that are ordinarily used on the advice of the government. The Head of State, they argued, has the facility ‘in (grave constitutional crisis) to act contrary to or without Ministerial advice’.<sup>22</sup> Fifteen years later, in the late summer of 2019, was the prorogation a ‘grave constitutional crisis’ that could have justified the Sovereign’s intervention?

### Select Commonwealth Precedents and Contexts

British experts have generally taken a position of near deferential constitutional chivalry towards the Queen, whereby any contemplation involving the Head of State in politics or crises was ungallant and unthinkable. While this may well be the ideal, the reality is that beyond ceremony a Head of State when crises arise must be prepared, and the political system also, for them to potentially enter the political realm. In essence today’s ‘High Priests’ of the mysterious British constitution<sup>23</sup>, unlike their predecessors, prior to the 2019 crisis at Westminster, have been lulled into relegating the royal Head of State to glorious constitutional isolationism whereby any political touch would contaminate the royal person. The other tendency from experts in Britain is being blind to the monarch having any political powers and or constitutional role. Indeed, if British specialists were more acquainted with the Queen’s Commonwealth roles, they would see that she has been Head of State during invasions, coups and civil wars. She has reigned as Head of State over governments that have encompassed military, Marxist-Leninist and Muslim foundations. She has witnessed a diversity of politics and has unparalleled experience of a variety of policies, ideologies and contested situations. In arguing the need for the Queen to be removed from crises there is the corollary question of what is the constitutional point of a Head of State if they have no role to play when a political crisis ensues. They become less guardian and more garden gnome of the constitution – a silent decorative observer. As a recent collection I have edited shows, covering not just the United Kingdom of Great Britain and Northern Ireland, but especially the post-colonial world, the Queen has had more experience and knowledge of political crises than almost any other Head of State in history due to the Commonwealth dimension of her reign.<sup>24</sup> In fact Elizabeth II since 1952 has a tally of almost two hundred men and women serving her as prime minister from across the independent realms of the Commonwealth.<sup>25</sup> She has even had to face effective abdication. In accepting the governor-general’s resignation in 1987 following two military coups in Fiji, the Queen had effectively abdicated as *Tui Viti*, ‘Monarch of the Fijians’, an act which her British prime minister, Margaret Thatcher, ‘thought was an awful thing to have



done', but had no power to advise differently or stop it since these were the affairs of the Fijian Queen and her advisors.<sup>26</sup> Indeed, as the episode shows Elizabeth II has seen many actual coups in contrast to the United Kingdom despite recent rhetoric presuming otherwise.<sup>27</sup>

From the evidence given in the Supreme Court case, it emerged that the Queen received 'a telephone call on 27<sup>th</sup> or 28<sup>th</sup> August' from the prime minister, who 'formally advised Her Majesty to prorogue Parliament'.<sup>28</sup> In a 2015 interview Sir William Heseltine, deputy private secretary to the Queen during the 1975 Australian constitutional crisis was asked if the Queen would have accepted the advice by Gough Whitlam by phone to sack the governor-general, Sir John Kerr, who was fearing for his position. Heseltine commented: 'None of us [at Buckingham Palace] felt the Queen would have been bound to act on a telephone call without support in terms of a signed written submission from the Prime Minister', a view concurred by the then private secretary, who added that 'written notification would have been required'.<sup>29</sup> And yet on an unspecified day in August 2019, a telephone call was sufficient to exercise the royal prerogative without written supporting evidence from the prime minister or disclosure of the memoranda prepared by law officers on the issue of prorogation.

Beyond Britain, scholars such as Australian law professor, Anne Twomey, have signalled a different perspective from most British ones and stated that the Queen does in fact have options available to her and was not 'bound' to accept the prorogation advice.<sup>30</sup> Derek O'Brien has also argued there are an array of cases and recent examples from the Caribbean on prorogation that can inform the present debate.<sup>31</sup> Twomey has recently offered a major work of scholarship that brings a wealth of precedents not only for prorogation, but also the Crown's reserve powers that, perhaps, British legal scholars will read. If they do they will see that many of their positions on both sides of the debate are either flawed or enhanced thanks to the verity and range of comparable Commonwealth precedents and laws.<sup>32</sup> Twomey's legal work speaks to the earlier pre-1945 scholarship of H. V. Evatt and Eugene Forsey, who were the last to study seriously the Crown's reserve and legal powers in the British Empire and Commonwealth. It is perhaps no accident that Evatt and Forsey were from Australia and Canada respectively. Both countries have faced political crises involving the Crown and Head of Government. As such this gave them a perspective to see the monarch and Crown in a multi-faceted light of wide British and oversea precedent, which their British counterparts have largely ignored, forgotten or have never had to engage with domestically. As Twomey shows, rather than a monarch having no choice there are examples, especially from Canada and Australia, both at federal and state level, from the nineteenth century to the present that are worth revisiting where serious conditions were made by the Governor-

General or Governor/Lieutenant-Governor on the ministry regarding prorogation that highlight different paths that could have been taken by the Queen at Balmoral on 28 August 2019.

In situations like 2019 at Westminster where the parliamentary arithmetic is fluid and in consequence the government's ability to advance its programme uncertain the parliamentary Head of State can legitimately ask for more assurances when asked to approve plans like proroguing parliament. In such circumstances the 'responsibility' of the government – that being its ability to command the confidence of the elected chamber – is in question and therefore the Head of State must be vigilant. The Canadian governor-general, Sir Edmund Head, for example, believed, that a 'lack of proven responsibility of ministers gave him greater discretion in the matter of prorogation'<sup>33</sup>. This was arguably the case of Boris Johnson as his government lacked a majority and "proven" confidence from the House of Commons having lost almost all its parliamentary votes before December 2019 general election. This did not deter him, in fact it may have spurred his request to the Queen for a prorogation, which placed the responsibility of his advice to the Head of State in question at the very least. During political crises like these there is always the power to simply ask questions without needing nuclear options such as dismissal or outright refusal. The political crises in Canada, particularly in December 2008 when Stephen Harper advised the governor-general, Michaëlle Jean, to prorogue parliament in order to avoid the potential fate of being brought down by a coalition of opposition parties shows different ideas of how things could have happened in Britain in 2019. Here, the indications are that Jean, as the Queen's Representative, not only kept Harper waiting before granting his request, but also stipulated conditions concerning the shortening of the time of prorogation and the condition that when parliament met again there should be an effective vote of no confidence immediately.<sup>34</sup> As the Queen herself has said on another occasion regarding a less than attractive Honours List: 'Please remind the Prime Minister that there is always time to think again'.<sup>35</sup>

Unstable parliamentary majorities over divisive international issues such as Brexit have compelled Parliamentary Heads of State to intervene. Governor-General Sir Patrick Duncan in South Africa on the heated policy of neutrality during World War II, favoured by the South African prime minister, General J. B. M. Hertzog, but opposed by the deputy prime minister and coalition partner, General Jan Smuts, refused a dissolution request in September 1939 from the prime minister since he believed a general election 'in the present state of feelings would be the occasion of great bitterness – possibly of violence'. For the governor-general the fact that the country had had an election less than a year earlier when the issues in the debate had been aired was also an concern. The Cabinet was split on the issue of war with an estimated five ministers for Hertzog and seven for Smuts' position. The executive and legislature were divided on the dramatic policy

of neutrality, with much in flux. Hertzog's ability to give responsible advice had also been disabled, owing to Smuts winning a parliamentary vote of eighty to sixty-seven in favour of war, which raised questions as to whether Hertzog could still command the confidence of the legislature. Smuts was subsequently invited to form a government and South Africa joined the war. Duncan was plagued with doubt as to whether he had done the right thing constitutionally and was faced with deep criticism, but in London the attorney-general, Sir Donald Somervell, argued that 'in the very special circumstances' the governor-general had acted legally and correctly. The governor-general's actions eventually led to Hertzog's leaving politics and consequently replaced by the more nationalist Afrikaans leadership of Daniel Malan who would in 1948 electorally and politically end the South Africa of Jan Smuts.<sup>36</sup>

In one of the more curious requests made to the Queen was one from the New Zealand Social Credit Party in March 1972 that asked her, in 'the absence of any prior referendum or election', to withhold assent to any 'enabling legislation' that would allow Britain's entry into the European Economic Community destined to occur shortly thereafter. They reminded the Queen that while she is Head of State of the United Kingdom, she is Head of many other states, including New Zealand, and as Head of the Commonwealth she has 'an undisputed right to preserve this unique association of nations in the face of the concerted efforts of a present majority of Westminster parliamentarians to destroy it in all but name'. By entering the Community these MPs are

Engaged not only in a process of destroying the Commonwealth but of sacrificing British sovereignty, for a Commission of non-elective bureaucrats subservient to massive European financial consortiums.<sup>37</sup>

The Queen's reaction is not recorded. Nonetheless, it gives an eccentric flavour of the sometime conflicting ideas and pressures that fall upon the Head of State(s).

## Conclusion

Yash Ghai and Jill Cottrell conclude their 1986 study of Pacific island Heads of State that have adopted a Westminster style constitution and parliamentary democracy with a critical observation on any British commonalities.

The truth is that the British experience is substantially irrelevant – for anywhere outside the UK. The experience of other countries with written “Westminster type” constitutions may be a little more useful – not as the basis for predicting what might happen so much as making the point that one should not assume crises cannot happen.<sup>38</sup>

The spectre of Parliamentary Heads of State across the post-colonial world should be used not only to inform other states from a comparable experience, but for the United Kingdom itself to understand the political powers of its own Head of State and position in government. Harold Laski over eighty years ago argued that ‘the elasticity of the Crown’s powers leaves dangerous room for the differences between men over ends to cloud their judgement about the legitimacy of the means the Crown might be persuaded to invoke upon a critical occasion’.<sup>39</sup> The problem in 2019 was that few in the United Kingdom appreciated the different and legitimate options available to both Head of State and Head of Government. I have recently attempted to revise Walter Bagehot’s attribution of Sovereign’s right to consult, encourage and warn, written over 150 years ago, with an analysis drawn from recent British and Commonwealth history to show how a Parliamentary Head of State can exercise the right to rule, uphold and oblige. In addition, experiences and ideas from across modern British and Commonwealth history have been used to build a conceptualisation of the position and powers of Heads of State in Britain and the postcolonial world.<sup>40</sup> The year 2019 is unlikely to be remembered as an *annus mirabilis* constitutionally or politically in the reign of Elizabeth II. As the year drew to a close the Queen herself described it as ‘quite bumpy’.<sup>41</sup> The political crises at Westminster of 2019 have shown that the political powers and constitutional role of the Head of State in the United Kingdom should be studied more closely, especially in situations where the reserve powers can controversially be used in favour of a prime minister or against a prime minister. Serious discord and uncertainty over the conventional roles and rights of both the Head of State and Head of Government can wreak havoc. At the very least Westminster’s 2019 crises reminded all that the United Kingdom was not exceptional, nor immune to such episodes.

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### Acknowledgement

This article is a slightly amended version of my forthcoming chapter “Viceregalism at Westminster: The Role and Powers of the Queen in the 2019 Brexit Parliamentary Crisis” in Kumarasingham (ed.), *Viceregalism - The Crown and its Representatives in Political Crises in the Postwar Commonwealth*, Houndsmills, Basingstoke: Palgrave Macmillan, 2020

## Notes

- <sup>1</sup> An exchange recounted in Hugh Dalton's diary, 28 July 1945, cited in Jay, *The Oxford Dictionary of Political Quotations*, 154
- <sup>2</sup> Blackburn, "Queen Elizabeth II and the Evolution of the Monarchy", 177
- <sup>3</sup> Hennessy, *Winds of Change – Britain in the Early Sixties*, 499
- <sup>4</sup> Cannadine, *In Churchill's Shadow*, 81 and 50.
- <sup>5</sup> See the Court's judgement: R (on the application of Miller) (Appellant) v The Prime Minister (Respondent) Cherry and others (Respondents) v Advocate General for Scotland (Appellant) (Scotland) On appeals from: [2019] EWHC 2381 (QB) and [2019] CSIH 49
- <sup>6</sup> For an analysis comparing the that crisis with the lessons for the present see Saunders, "Breaking the Parliamentary Machine"
- <sup>7</sup> This was discussed in April 2019 and remained a serious possibility in certain circles. See for example a letter from twenty-one academics and lawyers to *The Times* expressing their 'profound dismay' at the idea of Queen withholding the Royal Assent, 3 April 2019.
- <sup>8</sup> Evatt, *The King and His Dominion Governors*, 269
- <sup>9</sup> See for example the different takes on prorogation from leading scholars Martin Loughlin, "The Case of Prorogation" and Paul Craig, "Prorogation: Constitutional Principle and Law, Fact and Causation"
- <sup>10</sup> <https://www.politicshome.com/news/uk/political-parties/labour-party/news/106151/labour-mp-says-%E2%80%98monarchy-could-be-abolished%E2%80%99>
- <sup>11</sup> 'Note for the Record - Events leading to the resignation of Mr Heath's Administration on 4 March 1974', PREM 16/231, TNA
- <sup>12</sup> In Polly Toynbee's opinion, for example of the Queen on 14 October: "'My government will ...' she intoned as if sucking lemons, but she has no government capable of doing anything at all'. Polly Toynbee, 'This sham of a Queen's speech could prove the end for Boris Johnson', *The Guardian*, 14 October 2019
- <sup>13</sup> Kidd, *Union and Unionisms*, 299 fn 51
- <sup>14</sup> Jennings, *Cabinet Government*, p 343
- <sup>15</sup> Hennessy, *Muddling Through*, 34-52
- <sup>16</sup> Bogdanor, *The Monarchy and the Constitution*, 80
- <sup>17</sup> The Supreme Court's intervention into the reasons behind the prorogation seem to erode the convention in the United Kingdom stated in writing in 1986 by the Queen's then Private Secretary, Sir William Heseltine, in *The Times*, that communications between the Sovereign and the prime minister are completely confidential. See Bogdanor, *Monarchy and the Constitution*, p 71
- <sup>18</sup> Harold Macmillan, diary entry, 29 August 1959 in Catterall, *The Macmillan Diaries*, volume II, 243
- <sup>19</sup> Hailsham, "Foreword" in Kerr, *Matters of Judgement*, xvii
- <sup>20</sup> Murphy, *Monarchy & The End of Empire*, 157
- <sup>21</sup> Brazier, "Royal Assent to Legislation", 184-204
- <sup>22</sup> House of Commons Public Administration Committee, 'Taming the Prerogative: Strengthening Ministerial Accountability to Parliament – Fourth Report of Session 2003-04', HC 422, 16 March 2004, p 5
- <sup>23</sup> A phrase earlier used by political legal scholars R. F. V. Heuston and (later by) Geoffrey Marshall. See Marshall, *Parliamentary Sovereignty and the Commonwealth*, 47
- <sup>24</sup> Kumarasingham (ed.), *Viceregalism*
- <sup>25</sup> See Tables 1 and 2 in H. Kumarasingham, "Viceregalism – The Roles and Rights of Parliamentary Heads of State During Political Crises in Commonwealth History", in Kumarasingham, *Viceregalism*.
- <sup>26</sup> Hardman, "The Queen can handle coups", *The Spectator*, 7 September 2019.
- <sup>27</sup> The Shadow Chancellor, John McDonnell, was one who believed a coup had occurred in Britain in 2019. "Make no mistake, this is a very British coup" on the day prorogation, quoted in "Johnson to suspend parliament before Brexit, opposition denounces 'coup'", Reuters, 28 August 2019. There was talk in some circles in 1967-68 including the Newspaper baron Cecil King that the Labour government of Harold Wilson beset by economic problems and labour unrest should be replaced by an unelected national government with figures like Sir Oswald Mosely and Lord Mountbatten personally canvassed to head the administration and restore morale. This discussion of a "coup", as some have termed it, could come about 'when the Crown would have to intervene' as the conspirators around King recorded, with Mountbatten favoured to help facilitate the plot to supplant the government due to his connections with the Royal Family and Armed Forces. This fascinating piece of British history has most recently been discussed in Lownie, *The Mountbattens*, 317-326

- <sup>28</sup> See note 6.
- <sup>29</sup> Kelly and Bramston, *The Dismissal*, 133
- <sup>30</sup> Twomey, "When is prorogation 'improper'?"
- <sup>31</sup> O'Brien, 'Prorogation: A Postcolonial Perspective'
- <sup>32</sup> Twomey, *The Veiled Sceptre*
- <sup>33</sup> Twomey, *Veiled Sceptre*, 592-593
- <sup>34</sup> See Russell and Sossin (ed.), *Parliamentary Democracy in Crisis* and Russell, "Codifying Conventions"
- <sup>35</sup> Hennessy, *Hidden Wiring*, 65
- <sup>36</sup> See Stewart, "The British Government and the South African Neutrality Crisis, 1938-39, 947-972 and Tothill, "Why General Smuts won on 4<sup>th</sup> September 1939", 5-28
- <sup>37</sup> "Position of the Monarchy in Commonwealth Countries", January-December 1972, FCO 68/450, The National Archives
- <sup>38</sup> Ghai and Cottrell, *The Head of State in Pacific Island States*, 68
- <sup>39</sup> Laski, "Foreword" in Evatt, *The King and His Dominion Governors*, vi
- <sup>40</sup> Kumarasingham, "Viceregalism – The Roles and Rights of Parliamentary Heads of State During Political Crises in Commonwealth History"
- <sup>41</sup> The Queen's Christmas Broadcast, 23 December 2019 (<https://www.royal.uk/queen%E2%80%99s-christmas-broadcast-2019>)

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